

## 8. ENVIRONMENTAL COMPLIANCE

### 8.1 REQUIREMENTS

The proposed Masonville Dredged Material Containment Facility (DMCF) is required to comply with all applicable State of Maryland and Federal regulations. Table 8-1 lists all the Federal statutes and Executive Orders that have been considered for the proposed Masonville DMCF. The table indicates the extent of compliance. Some of these statutes and orders are not applicable to the project and are noted as such. An explanation of compliance levels is as follows:

- **Full Compliance (Full):** Having met all requirements of the statute, executive order, or other environmental requirements for the current stage of planning
- **Partial Compliance (Partial):** Not having met some of the requirements that normally are met in the current stage of planning.
- **Non-Compliance (NC):** Violation of a requirement of the statute, executive order, or other environmental requirement.
- **Not Applicable (NA):** No requirements for the statute, executive order, or other environmental requirement for the current stage of planning.

**Table 8-1. Compliance Assessment**

FEDERAL STATUTES	LEVEL OF COMPLIANCE	NOTES
The American Indian Religious Freedom Act	FULL	
Antiquities Act	FULL	
Archeological and Historic Preservation Act	FULL	
Archeological Resource Protection Act	FULL	
Clean Air Act	FULL*	
Clean Water Act	PARTIAL**	Joint Permit application has been filed
Coastal Barrier Resources Act	FULL	
Coastal Zone Management Act	PARTIAL	Joint Permit application has been filed
Comprehensive Environmental Response, Compensation, and Liability Act	FULL	
Endangered Species Act	FULL	Section 7 Coordination with USFWS, Maryland DNR, and NMFS has been completed. Letters in Appendices O and Q.
Estuary Protection Act	FULL	
Farmland Protection Policy Act	FULL	
Federal Water Project Recreation Act	FULL	
Fish and Wildlife Coordination Act	FULL	
Fishery Conservation and Management Act	FULL	
Historic Sites Act of 1935	FULL	
Land and Water Conservation Fund Act	FULL	

<b>FEDERAL STATUTES</b>	<b>LEVEL OF COMPLIANCE</b>	<b>NOTES</b>
Magnuson-Stevens Fishery Conservation and Management Act	FULL	
Marine Mammal Protection Act	FULL	
Marine Protection, Research, and Sanctuaries Act	FULL	
Migratory Bird Conservation Act	FULL	
National Environmental Policy Act	FULL	FEIS has been circulated
National Historic Preservation Act	FULL	
Native American Graves Protection and Repatriation Act	FULL	
Noise Control Act	FULL	
North American Wetlands Conservation Act	FULL	
Occupational Health and Safety Act	FULL	
Resource Conservation and Recovery Act	FULL	
Rivers and Harbors Act	PARTIAL	Joint Permit application has been filed
Safe Drinking Water Act	FULL	
Solid Waste Disposal	FULL	
Water Resources Planning Act	FULL	
Watershed Protection and Flood Prevention Act and the River and Harbor Flood Control Act	FULL	
Wild and Scenic Rivers Act	FULL	
Wilderness Act	FULL	
<b>Executive Orders (EO), Memoranda, etc.</b>		
Protection and Enhancement of Environmental Quality (EO 11514)	FULL	
Protection and Enhancement of Cultural Environment (EO 11593)	FULL	
Protection of Cultural Property (EO 12555)	FULL	
Protection and Enhancement of Cultural Environment (EO 11593)	FULL	
Floodplain Management (EO 11988)	FULL	
Protection of Cultural Property (EO 12555)	FULL	
Floodplain Management (EO 11988)	FULL	
Protection of Wetlands (EO 11990)	FULL	
Prime and Unique Farmlands (Memorandum, Council on Environmental Quality, 11 August 1980)	FULL	
Federal Compliance with Pollution Control Standards (EO 12088)	FULL	
Environmental Justice (EO 12898)	FULL	

<b>FEDERAL STATUTES</b>	<b>LEVEL OF COMPLIANCE</b>	<b>NOTES</b>
Protection of Children from Health and Safety Risks (EO 13045)	FULL	
Responsibilities of Federal Agencies to Protect Migratory Birds (EO 13186)	FULL	
Recreational Fisheries (EO 12962)	FULL	
Environmental Effects of Major Federal Actions (EO 12114)	FULL	
Facilitation of Cooperative Conservation (EO 13352)	FULL	

*\*The project requires a Federal conformity decision in order to be in complete compliance. A draft conformity decision is included in Appendix K of this document and the final conformity decision will be issued with the Record of Decision.*

*\*\*Compliance is contingent upon project obtaining all pertinent permits and water quality certification from the MDE and the USACE prior to the start of construction, as required by section 401(c) of the Clean Water Act.*

8.2 PERMITTING

Table 8-2 Permits and Coordination Required for the Proposed Masonville DMCF

Permit/Approval/Agreements	Agency	Permit Regulatory Action	Assumptions	Description Action Required	Estimated Time Requirement
Joint Permit Application					
Tidal Wetlands License	Maryland Department of the Environment (MDE)	Required on filling of open water and vegetated wetlands, construction of piers, dredging, and marsh establishment	Upon receipt of the application package, the Regulatory Services Coordination (RSC) Office will determine what type of permit is necessary and will forward the application to the appropriate governmental agencies. The RSC receives applications for the Non-tidal Wetlands and Waterways Division, Tidal Wetlands Division, and Dam Safety Division of the Maryland Department of the Environment, as well as the U.S. Army Corps of Engineers. The Department conducts the review in cooperation with local, State, and Federal agencies.	Applicants are required to demonstrate that proposed impacts to tidal wetlands are necessary and unavoidable. The application review process first eliminates then reduces impacts through avoidance and minimization. An alternatives analysis may be required as part of this process. Mitigation may be required for authorized impacts. Wetland mitigation monitoring may be required and may extend beyond construction of an approved mitigation project.	5-8 Months
Non-Tidal Wetlands Permit	MDE	An authorization is required for any activity that alters a non-tidal wetland or its 25-foot buffer.	Upon receipt of the application package, the RSC Office will determine what type of authorization is necessary and will forward the application to the appropriate governmental agencies. The RSC receives applications for the Non-tidal Wetlands and Waterways Division, Tidal Wetlands Division and the Dam Safety Division of the Maryland Department of the Environment, as well as the U.S. Army Corps of Engineers. The Department conducts the application review in cooperation with local, State and federal agencies.	An authorization is required for any activity that alters a non-tidal wetland or its 25-foot buffer. Applicants are required to demonstrate that proposed impacts to non-tidal wetlands are necessary and unavoidable. The application review process first eliminates, and then reduces impacts through avoidance and minimization. An alternatives analysis may be required as part of this process. Mitigation is required for all authorized impacts. Wetland mitigation monitoring is required and will extend beyond construction of an approved mitigation project.	10-12 months
Water Quality Certification	MDE	A State Water Quality Certification (WQC), which insures the protection of waters of the State, is necessary for activities requiring a U.S. Army Corps of Engineers (USACE) Section 404 permit. When an activity is authorized by a permit or general wetlands license, the WQC is incorporated into that authorization. When a wetlands license is issued by the board of public works (BPW) or the activity is exempt from the requirement to obtain a wetlands license or permit, an individual WQC is issued by the Department.		Chesapeake Bay Critical Area Protection Program; erosion and sediment controls and stormwater management plan approvals and local building permits	8 months

Permit/Approval/Agreements	Agency	Permit Regulatory Action	Assumptions	Description Action Required	Estimated Time Requirement
Federal Consistency Determination (Coastal Zone)	MDE	The Coastal Zone Management Act (CZMA) of 1972 gives states with federally approved coastal programs the lead in coordinating and strengthening coastal zone management activities of all levels of government.	There is no standard application form that must be filled out to initiate the review process. A federal agency or consultant working for a federal agency on a proposed project should submit a federal consistency determination, based on the goals and objectives of the State’s Coastal Zone Management Program (CZMP), to the MDE, Wetlands and Waterways Program. The Department will review the proposed project and concur or object to the federal consistency determination. An applicant for a federal license or permit must certify that the proposed activity is consistent with the Maryland CZMP. The vast majority of federal permits and licenses reviewed for consistency with the CZMP are USACE’s Section 10 and Section 404 activities. The Joint Federal/State Permit Application for these activities contains the required certification. The State’s permit authorization for these activities will include the required federal consistency decision. State or local agencies applying for federal assistance will have their application reviewed through the State’s Clearinghouse review process. Project information may also be sent directly to the Wetlands and Waterways Program, MDE, for a direct response.		2 months
Section 404 Permit	USACE	Issued by the USACE to regulate the discharge of dredged material or fill material into waters of the U.S.	This site will have tidal, non-tidal or shallow water impacts as a result of the facility, access channel or pier construction and therefore fall under the jurisdiction of USACE.	USACE issues a public notice of application and solicits comments from state and federal agencies as well as the public. Environmental assessment or Environmental Impact Statement (EIS) may be required.	18-24 months
Section 10 Permit	USACE	Regulates certain activities in or affecting "navigable" waters of the United States. Regulated activities include dredging, filling, structures, and any other permanent or semi-permanent modification which may affect navigation.	Same as above	USACE issues a public notice of application and solicits comments from state and federal agencies as well as the public. District Engineer takes comments into consideration. Environmental assessment or EIS may be required.	
<b>Additional Permits</b>					
Erosion and Sediment Control Approval	MDE	Required to prevent siltation from active construction site, used for management during construction	Need to have erosion and sediment control plans and specification completed	Plan can be submitted following construction plans submittal	6 months

Permit/Approval/Agreements	Agency	Permit Regulatory Action	Assumptions	Description Action Required	Estimated Time Requirement
Critical Area Commission Approval	Maryland Department of Natural Resources (DNR)	The Chesapeake Bay Critical Area Protection Act (Critical Area Act) was enacted in 1984 by the Maryland General Assembly to help reverse the deterioration of the Chesapeake Bay and the surrounding environment. In 2002, the Act was amended to add the Atlantic Coastal Bays to the area protected by the Critical Area regulations. The Act recognizes that the land immediately surrounding the Bays and their tributaries has the greatest potential to affect its water quality and wildlife habitats. The “Critical Area” is designated as all land within 1,000 feet of tidal waters or from the edge of tidal wetlands. Required to comply with intensely developed areas (IDA) requirements- 10% rule	Maryland DNR will not accept plans until MDE signs off with 80% approval, tied in with MDE erosion and sediment Control.	Site design needs to be presented to the Critical Area Commission.	3 months
Storm Water Management Approval	MDE			Coordination with the Critical Area Commission.	3-6 months
Storm Drain Modification Permit	Baltimore City	Requires a Baltimore City Public Works Developer Agreement			4 months
National Pollutant Discharge Elimination System (NPDES) Permit	MDE	Issued by MDE to allow facility to discharge water back into the surrounding water		Submit a completed application to MDE. MDE publishes notice of the application and provides an opportunity for an informational meeting. MDE develops permit limits. MDE publishes a notice of tentative determination and conducts a public hearing, if requested. MDE issues the permit if adverse comments are not received. If adverse comments are received, the Department prepares a final determination and publishes additional notice providing 15 days to request a contested case hearing. MDE issues the permit if the final determination is not contested. If contested, administrative procedures for the appeal process are followed.	at least 18 months
Federal Conformity Decision	MDE/USEPA	If emissions are over the <i>de minimus</i> value, a Federal conformity decision is required.	Emissions for NOx are over the <i>de minimus</i> value.	Complete a Conformity Analysis for review by EPA and MDE. Approval of conformity plan is required.	at least 1 month
Industrial Wastewater/Stormwater General Discharge Permits	MDE	<p>The general permits for industrial wastewater discharge increase the efficiency of the Department’s permitting process through the issuance of generic permits to categories of business activities which are generally very similar in their wastewater characteristics. General permits with standardized permit conditions have been established for surface and ground water discharges from:</p> <ul style="list-style-type: none"> <li>• Stormwater associated with industrial activities</li> <li>• Surface coal mines</li> <li>• Mineral mines, quarries, borrow pits, ready-mix concrete and asphalt plants</li> <li>• Seafood processors</li> <li>• Hydrostatic testing of tanks and pipelines</li> <li>• Marinas</li> <li>• Concentrated animal feeding operations</li> </ul>	The waterline will have to be tested after it is connected and this permit will be required for that testing.	File a Notice of Intent (NOI) and pay associated fee.	60 to 90 days

Permit/Approval/Agreements	Agency	Permit Regulatory Action	Assumptions	Description Action Required	Estimated Time Requirement
Water Appropriations Permit	MDE	In order to conserve, protect, and use water resources of the State in the best interests of the people of Maryland, it is necessary to control the appropriation or use of surface and underground waters. This permit is required for any activity that withdraws water from the State's surface and/or underground waters unless exempted.	Pumping surface water while filling the dike and during dredged material placement in the operation facility.	<b>PRE-APPROVAL:</b> An applicant must provide satisfactory proof that the proposed withdrawal of water is reasonable and the impacts on the water resource and other users are acceptable. In addition, the proposed use must be consistent with the local planning and zoning requirements and the county water and sewer plan. <b>POST APPROVAL:</b> The project must meet withdrawal limits and may be required to meet periodic reporting, environmental and other requirements specific to the permit.	18 months
Toxic Material Permit	MDE	This permit is required for any homeowner, farmer, local government, or other person who wants to control aquatic life in ponds, ditches or waterways by the deliberate use of toxic chemicals (e.g., mosquito control, algae removal).	Required for <i>Phragmites australis</i> removal.	The proposed product and method of application must be approved by MDE. The permit will also include a schedule for applying the product.	45 days
Endangered Species Consultation	Maryland DNR, NOAA NMFS, USFWS	Section 7 of the Endangered Species Act (ESA) requires Federal agencies to aid in the conservation of listed species and requires Federal agencies to ensure that their activities will not jeopardize the continued existence of listed species or adversely modify designated critical habitats.	Required to assess impacts to shortnose sturgeon, sea turtles, and the bald eagle.	The Federal agency associated with the project must request information from NMFS, USFWS, and DNR about endangered species in the area of the project site. If there are any in the area, consultation must occur. If there are no adverse affects to endangered species, then the process remains informal. If there are, a formal process ensues.	varies

There are websites with additional information for several of the permits. These websites are shown in Table 8-3.

**Table 8-3. Permits and Approvals: Additional Online Information**

<b>Permit</b>	<b>Website</b>
Water Quality Certification	<a href="http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.asp">http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.asp</a>
Tidal Wetlands License	<a href="http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.asp">http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.asp</a>
Non-Tidal Wetlands License	<a href="http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.asp">http://www.mde.state.md.us/Programs/WaterPrograms/Wetlands_Waterways/permits_applications/index.asp</a>
Erosion and Sediment Control Approval	<a href="http://www.mde.state.md.us/Permits/WaterManagementPermits/3.19">http://www.mde.state.md.us/Permits/WaterManagementPermits/3.19</a>
Stormwater Management Approval	<a href="http://www.mde.state.md.us/Permits/WaterManagementPermits/water2.asp#3.19">http://www.mde.state.md.us/Permits/WaterManagementPermits/water2.asp#3.19</a>
Critical Area Commission Approval	<a href="http://www.dnr.state.md.us/criticalarea/">http://www.dnr.state.md.us/criticalarea/</a>
Surface Water Appropriations Permit (SWAP)	<a href="http://www.mde.state.md.us/Permits/WaterManagementPermits/3.02">http://www.mde.state.md.us/Permits/WaterManagementPermits/3.02</a>
Costal Zone Consistency Determination	<a href="http://www.dnr.state.md.us/bay/czm/fed_consistency.html">http://www.dnr.state.md.us/bay/czm/fed_consistency.html</a>
Oil Operations Permit	<a href="http://www.mde.state.md.us/Permits/WasteManagementPermits/wasteWater_app/index.asp">http://www.mde.state.md.us/Permits/WasteManagementPermits/wasteWater_app/index.asp</a>
Toxic Material Permit	<a href="http://www.mde.state.md.us/Permits/WaterManagementPermits/3.05">http://www.mde.state.md.us/Permits/WaterManagementPermits/3.05</a>
Section 404/Section 10 Permit	<a href="http://www.nab.usace.army.mil">http://www.nab.usace.army.mil</a>

### **8.3 MONITORING**

Environmental monitoring would be performed to measure regulatory compliance, to determine the success of enhancement and mitigation measures, and to confirm whether or not there are negative impacts to the surrounding environment. Following the models of the Hart-Miller Island (HMI) DMCF and the Poplar Island Environmental Restoration Project (PIERP), it is expected that the monitoring framework could include: (1) turbidity monitoring, (2) sediment quality, (3) wetland vegetation, (4) water quality, (5) benthic and epibenthic community, (6) fisheries use of exterior proximal waters, (7) Masonville Cove use by fish, (8) bird utilization, (9) interior water quality/algae, (10) SAV monitoring; and (11) other monitoring (e.g. stocked fish) that might be required under the site mitigation plan. Chapter 6 contains additional information on the conceptual mitigation projects.

A monitoring framework similar to what was developed for the PIERP would be developed in consultation with various resource agencies. Some initial input on types of monitoring and measures of success has been received from the agencies and will be evaluated in consultation with the Bay Enhancement Working Group (BEWG). It is anticipated that establishment of a project specific working group or monitoring subgroup may be required. It is expected that an adaptive management plan or contingency plan would need to be established for mitigation that includes the creation or enhancement of compensatory wetlands. Details of the plan can not be established until the mitigation package for the site is complete.